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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Kazakhstan under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Kazakhstan under article 29 (1) of the Convention (CED/C/KAZ/1) at its 162nd and 163rd meetings (CED/C/SR.162 and 163), held on 9 and 10 March 2016. At its 172nd meeting, held on 16 March 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Kazakhstan under article 29 (1) of the Convention and the information contained therein. The Committee appreciates the constructive dialogue held with the high-level delegation from the State party on the measures taken to implement the provisions of the Convention. In addition, the Committee thanks the State party for its written replies (CED/C/KAZ/Q/1/Add.1) to the list of issues (CED/C/KAZ/Q/1), which were supplemented by the oral responses provided by the delegation during the dialogue.

B. Positive aspects

3. The Committee commends the State party for having ratified and acceded to almost all of the core United Nations human rights instruments and most of their optional protocols.

4. The Committee also commends the State party on the measures taken in areas related to the Convention, including:

(a) The adoption of the new Criminal Code, on 3 July 2014;

(b) The adoption of the new Code of Criminal Procedure, on 4 July 2014;

(c) The adoption of the law amending legislation concerning the establishment of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment, on 2 July 2013.

* Adopted by the Committee at its tenth session (7-18 March 2016).

5. The Committee also notes with satisfaction that the State party has extended an open invitation to all special procedure mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

6. The Committee considers that, at the time of adoption of the present concluding observations, the legislation in force in the State party and the performance of some of its competent authorities were not in full compliance with the obligations incumbent on States that have become parties to the Convention. The Committee calls upon the State party to implement its recommendations, which have been made in a constructive spirit of cooperation to assist the State party to give effect in law and practice to its obligations under the Convention.

General information

Individual and inter-State communications

7. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, but that the possibility of doing so is being studied by relevant State bodies (arts. 31-32).

8. **The Committee encourages the State party to recognize as soon as possible the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention, respectively, with a view to strengthening the framework for protection against enforced disappearances provided for in the Convention.**

National human rights institution

9. While noting with concern that the Office of the Human Rights Commissioner is not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), the Committee takes note of the information provided by the State party that currently there are discussions about having a single law to strengthen the status of that Office.

10. **The Committee recommends that the State party adopt the legislative or other measures necessary to bring the Office of the Human Rights Commissioner into full compliance with the Paris Principles.**

Definition and criminalization of enforced disappearance (arts. 1-7)

Offence of enforced disappearance

11. The Committee takes note of the State party's assertion that article 414 of the Criminal Code establishes responsibility for enforced disappearance as defined by the Convention and that, in its view, there is no need to incorporate into domestic law enforced disappearance as an autonomous offence. However, the Committee is concerned that, even though they contain elements related to enforced disappearance, article 414 and other offences against liberty contained in the Criminal Code are not sufficient to adequately encompass all the constituent elements and modalities of an enforced disappearance, as defined in article 2 of the Convention, and thus to comply with the obligation under article 4, which is closely related to other treaty obligations concerning legislation, such as those

in articles 6 and 7. In this respect, while taking note that pursuant to article 54 (1) (16) of the Criminal Code the commission of an offence by a member of a law enforcement or special State body or a judge with the use of his or her official position is considered an aggravating circumstance, the Committee considers that article 414 of the Criminal Code also does not provide for appropriate penalties that take into account the extreme seriousness of enforced disappearance. Furthermore, the Committee observes that national legislation does not specifically criminalize enforced disappearance as a crime against humanity in accordance with the standards provided for under article 5 of the Convention (arts. 2 and 4-7).

12. **The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:**

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.**

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Statute of limitations

13. The Committee notes with interest that domestic law establishes that certain offences, such as torture, are not subject to a statute of limitations. However, it notes that article 71 of the Criminal Code stipulates that the term of limitation is counted from the day of the commission of the criminal act, not from the end of it, and expresses its concern that domestic law does not seem to contemplate any exceptions for offences of a continuous nature that could be applied in a case of enforced disappearance (art. 8).

14. **The Committee, emphasizing the continuous nature of enforced disappearance, recommends that the State party take the measures necessary to ensure that, in line with article 8 (1) (b) of the Convention, the term of limitations for criminal proceedings in respect of enforced disappearance, or other continuous offences applied instead of it where enforced disappearance is not specifically criminalized, commences from the moment when the enforced disappearance ceases (inter alia, from the moment when the disappeared person is found alive, in the event of death, when his or her remains are found and identified, or when the identity of a child subjected to wrongful removal is restored). The Committee invites the State party, when criminalizing enforced disappearance as an autonomous offence, to provide that the offence is not subject to any statute of limitations.**

Prevention and sanction of acts that may hinder the conduct of investigations

15. The Committee welcomes the information provided by the State party concerning the steps taken to ensure that criminal investigations against public officials are conducted impartially and independently, including the establishment of the special prosecutors units. However, the Committee is concerned that, according to the information before it, the internal security or internal investigation units of the law enforcement or security forces whose officials are accused of having committed a crime could still be involved in the initial stages of an investigation (art. 12).

16. **The Committee recommends that the State party adopt all the measures necessary to prevent acts that may hinder or influence the conduct of an investigation into an enforced disappearance, particularly by guaranteeing in practice that officials belonging to the same law enforcement or security force as the person accused of having committed an enforced disappearance are not involved in the investigation.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

17. The Committee takes note of the information provided by the State party on the legislative and other measures taken in the fields of extradition and asylum to ensure respect for the principle of non-refoulement. However, it is concerned at allegations of instances in which: (a) asylum seekers without valid travel documents or visas were not allowed to enter the State party and apply for asylum despite the fact that the Refugee Law stipulates otherwise; and (b) asylum seekers were forcibly returned to their countries of origin before final decisions on their asylum claims were reached. The Committee takes note of the assertion by the State party that diplomatic assurances from States requesting extradition are not accepted as the only guarantee if there is a possible risk of the person being subjected to enforced disappearance (art. 16).

18. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly respected in all circumstances. In particular, the Committee recommends that the State party adopt the measures necessary to ensure in practice that:**

(a) **All asylum seekers, including those without valid travel documents or visas, have unhindered access to effective refugee status determination procedures that comply fully with the obligations arising under article 16 of the Convention;**

(b) **Before it proceeds to an expulsion, return or extradition, all relevant procedures have been exhausted and a thorough individual examination has been carried out to determine whether there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance and that, if there are such grounds, the person concerned is not expelled, extradited or returned;**

(c) **Diplomatic assurances are evaluated with the utmost care and that they are not accepted in any case where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance.**

Communication by persons deprived of liberty

19. The Committee notes with appreciation that article 414 of the Criminal Code criminalizes, inter alia, the wilful failure to inform a suspect's relatives of his or her detention and whereabouts and the unlawful refusal to provide information on the place where a person is being held in custody to a citizen who has the right to receive such information. In addition, the Committee takes note of the information provided by the State party that there have been no complaints relating to the failure to observe the legal provisions that establish the obligation of the official responsible for the pretrial investigation to immediately provide information on the arrest and whereabouts of a person to his or her relatives or to other persons close to him or her, or to give the person the opportunity to do so himself or herself; the obligation to immediately report the arrest of foreign persons to the relevant representatives of their State; and the right to meet with counsel from the moment of detention. However, it is concerned at allegations of instances

in which persons deprived of their liberty were not able to meet promptly with their lawyer or inform the person of their choice of the deprivation of liberty (arts. 17-18 and 22).

20. **The Committee recommends that the State party adopt the measures necessary to guarantee in practice, from the outset of the deprivation of liberty, that all persons have access to a lawyer, and that their relatives or any other person of their choice and, in the case of foreigners, their consular authorities, are informed of the deprivation of liberty and of the place where the person is being held. It also recommends that the State party also guarantee in practice that any acts hindering the observance of these rights be adequately sanctioned.**

Registers of persons deprived of liberty

21. The Committee welcomes the information provided by the State party about the electronic database that contains information on persons held in special temporary detention facilities and in facilities where they serve their sentences, and that is integrated to the databases of other State bodies. However, it regrets not receiving clarifications on whether registers kept in all places where persons may be deprived of liberty, irrespective of their nature, include all the information listed in article 17 (3) of the Convention. While welcoming that article 414 of the Criminal Code punishes the falsification of the time at which an arrest record was drawn up or of the time of actual arrest, and taking note of the assertion by the State party that no complaints have been received on improper registration of deprivation of liberty, the Committee remains concerned at reports that, in some instances, law enforcement officials have allegedly failed to accurately record the time of arrest (arts. 17 and 22).

22. **The Committee recommends that the State party take the steps necessary to ensure that:**

(a) **All deprivations of liberty are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;**

(b) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.**

National preventive mechanism

23. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the adoption of the law amending legislation concerning the establishment of a national mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment and the designation of the Human Rights Commissioner as the national preventive mechanism, as it considers that those measures could be instrumental in preventing enforced disappearances and other violations of the rights and obligations contained in the Convention. While taking note of the range of places visited by the national preventive mechanism, the Committee is concerned at information that relevant legislation leaves outside of its mandate certain places where persons may be deprived of liberty. In this respect, the Committee observes with interest the information provided by the State party that work is under way to amend relevant legislation so as to expand the range of places to be visited by the national preventive mechanism. While taking note of the assertion by the State party that there are no constraints limiting the ability of the national preventive mechanism to undertake urgent and unannounced visits, the Committee is concerned at reports indicating that the mechanism has faced some bureaucratic obstacles that in practice have restricted its ability to carry out that type of visit (art. 17).

24. **The Committee recommends that the State party speed up the process aimed at amending the legislation relating to the national preventive mechanism so as to ensure in law that its mandate extends to all places where persons may be deprived of liberty, irrespective of the nature of the place of deprivation of liberty. It also recommends that the State party adopt the measures necessary to guarantee in practice that the national preventive mechanism can carry out urgent, unplanned and unannounced visits to any place of deprivation of liberty without obstacles of any kind.**

Training on the Convention

25. The Committee notes with appreciation the information provided by the State party regarding the regular training provided to judges and military and internal affairs personnel, including on international human rights law, and in particular the information concerning the training dispensed to law enforcement personnel on how to deal with missing persons and other issues related to the Convention. However, it notes that no specific and regular training is provided to all State officials on the relevant provisions of the Convention in the terms provided for in article 23 (1) thereof (art. 23).

26. **The Committee recommends that the State party ensure that all law enforcement and security personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24-25)

Definition of victim and right to receive reparation and prompt, fair and adequate compensation

27. While observing that domestic law does not provide for a definition of victim in line with the one in article 24 (1) of the Convention, the Committee takes note of the assertion by the State party that the concept of injured party under article 71 of the Code of Criminal Procedure covers all persons who suffered harm as a result of a criminal act. In addition, the Committee takes note of the information provided by the State party about legislation relating to compensation and reparation, including article 71 of the Code of Criminal Procedure and the law on special social services, and about the instances in which compensation and reparation are to be funded from the State budget. However, the Committee observes that no provision is made in domestic law for a comprehensive system of reparation that fully meets the requirements of article 24 (4) and (5) of the Convention (art. 24).

28. **The Committee recommends that the State party take the appropriate measures, including the provision of suitable training for members of the judiciary, to ensure that the concept of injured party in article 71 of the Code of Criminal Procedure is applied in accordance with the definition of victim contained in article 24 (1) of the Convention. The Committee also recommends that the State party adopt the measures necessary to ensure that any person who has suffered harm as the direct result of an enforced disappearance obtains full reparation in accordance with article 24 (5) of the Convention and prompt, fair and adequate compensation. To this effect, the Committee recommends that the State party establish a comprehensive, gender-sensitive system of reparation and compensation that is fully in line with article 24 (4) and (5) of the Convention and other relevant international standards.**

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

29. The Committee takes note of the assertion by the State party that national legislation ensures that the property rights of missing persons and their families are upheld. However, it regrets not having received adequate information about the legislation that would apply with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in other fields, such as social welfare and family law (art. 24).

30. **In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to guarantee that domestic law deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in fields such as social welfare, financial matters, family law and property rights. In this respect, the Committee encourages the State party to set up a procedure to obtain a declaration of absence as a result of enforced disappearance.**

Legislation concerning the wrongful removal of children

31. While taking note of the information provided by the State party concerning existing legislative mechanisms to protect the rights of children, the Committee notes with concern that there are no provisions in the legislation in force that specifically criminalize the actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention (art. 25).

32. **The Committee recommends that the State party adopt the legislative measures necessary to make the actions referred to in article 25 (1) of the Convention specific offences and that it establish appropriate penalties for such actions that take into account their extreme seriousness.**

D. Dissemination and follow-up

33. The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments.

34. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

35. The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The

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Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

36. In accordance with the Committee's rules of procedure, the State party should provide, by 18 March 2017 at the latest, relevant information on its implementation of the recommendations contained in paragraphs 12, 20 and 22.

37. Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 18 March 2022, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (see CED/C/2, para. 39). The Committee encourages the State party to promote and facilitate the participation of civil society in the preparation of this information.